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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,406	03/17/2004	Stephen A. Campbell	130109.492	3696
500 7590 01/11/2007 SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 5400 SEATTLE, WA 98104			EXAMINER MERCADO, JULIAN A	
			ART UNIT 1745	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/802,406

Applicant(s)

CAMPBELL, STEPHEN A.

Examiner

Julian Mercado

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2004-07-30</u> . | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Remarks

Claims 1-9 are pending.

Information Disclosure Statement

The Information Disclosure Statement filed on July 30, 2004 has been considered by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchanan et al. (U.S. Pat. 5,759,944) in view of Faita et al. (U.S. Pat. 5,565,072).

For claim 1, Buchanan et al. teaches an electrocatalyst layer comprising a platinum catalyst alloyed with less than 10% of a noble metal. See col. 3 line 59. The electrocatalyst is specifically disclosed for both phosphoric acid and solid polymer electrolyte (PEM) fuel cells. See col. 2 line 48 et seq.

Buchanan et al. does not teach the particulars of a PEM electrolyte fuel cell having the claimed membrane electrode assembly, anode and cathode fluid diffusion layer, ion-exchange

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membrane and anode and cathode catalyst layer. However, Faita et al. teaches a fuel cell having a membrane electrode assembly with anode and cathode fluid diffusion layers [8], a Nafion ion-exchange membrane [6] and anode and cathode catalyst layer disclosed as being in “embedded in the membrane surface...” See col. 10 line 38 et seq., col. 11 lines 3-8 and col. 12 lines 5-7.

Thus, it would naturally flow for the PEM electrolyte fuel cell disclosed by Buchanan et al. to have, inherently, the same structure as claimed, absent of a showing by applicant that the claimed invention distinguishes over the reference. *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) and *In re Spada*, 15 USPQ 2d 1655 (Fed. Cir. 1990)

For claim 2, the noble metal is disclosed as gold, *inter alia*. See col. 3 line 59 and col. 2 lines 21-22.

For claim 3, the amounts of the noble metal alloyed with platinum is less than 5 %. (ib.)

For claim 4, the amounts of the noble metal alloyed with platinum is less than 3 %. (ib.)

For claim 5, the amounts of the noble metal alloyed with platinum is less than 1 %. (ib.)

For claim 6, the platinum catalyst is supported such as by carbon. See col. 2 line 1 et seq.

For claim 7, the platinum catalyst is a binary catalyst insofar as being alloyed with the noble metal (gold and/or rhodium), or, insofar as further including alloying elements. See col. 1 line 65 et seq.

For claim 8, it is asserted that a fuel cell is an electrochemical cell.

For claim 9, Faita et al. further teaches that the fuel cell is comprised of three cell elements which defines an electrochemical fuel cell stack comprising at least one fuel cell. See col. 15 line 59 et seq.

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Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.




PATRICK JOSEPH RYAN
SUPERVISORY PATENT EXAMINER